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Bail Slip

The Appellants 1 to 6 in CA 59/99 herein namely 1.Ayodhi 2.Krishnan 3.Raja @ Muthan 4.Kuppammal 5.Saradha 6.Chinnakutti (Accused 1 to 6 in S.C.No.54/98 on the file of the Court of the Addl Sessions Judge Tiruvannamalai were directed to be released on bail as per order of this Court dated 4.2.99 and made in Crl.M.P.660/99.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-7-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.59 of 1999

1.Ayodhi
2.Krishnan
3.Raja @ Muthan
4.Kuppammal
5.Saradha
6.Chinnakutti .. Appellants/ Accused 1 to 6

vs

State rep. by
Inspector of Police
Chengam Police Station .. Respondent

Criminal appeal filed under Sec.374 of the Code of Criminal Procedure against the judgment of the Additional Sessions Judge, Tiruvannamalai, made in S.C.No.54 of 1998 and dated 24.12.1998.

For Appellants : Mr.V.Gopinath,
Senior Counsel
for M/s.N.S.Nappinai
L.Mahendran

For Respondent : Mr.S.Jayakumar
Additional Public
Prosecutor

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JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

The appellants herein who are six in number, stood charged before the trial Court namely the Additional Sessions Court, Tiruvannamalai, in S.C.No.54 of 1998, under Sections 147 and 302 read with 149 of I.P.C. On trial they were found guilty as per the charges, and life imprisonment was awarded for the charge under Sec.302 read with 149 of I.P.C., and as the major punishment was given, the punishment on the other charge was not awarded. Aggrieved over the same, the appellants have brought forth this appeal.

2. The short facts necessary for the disposal of this appeal are:

(a) P.W.2 is working in the Forest Department. The deceased Kuppusamy was his father. P.W.2 knew all the accused. The first accused had his lands on the western side of the lands of P.W.2. Regarding the pathway in between the lands, there was an animosity for the accused. P.W.2 sent number of petitions to Tahsildar and Collector. On the date of occurrence namely 28.5.1996, at about 7.30 A.M., P.W.2, his father, M.G. and one Sekar were talking in the lands of P.W.2 near Sarayakaran Odai. The father of P.W.2 instructed the said Sekar and M.G. not to allow the first accused to come through the lands of P.W.2. At that time, all the accused were proceeding on the said pathway. Immediately, it was questioned by the witnesses. Then, the third accused attacked the deceased on his left cheek by using his right hand. The said Kuppusamy had fallen down. The second accused attacked the deceased on his left leg by using stone. A-1 trampled the deceased on his chest by using his legs. The fourth accused trampled the deceased on his right side stomach, and the fifth accused also trampled the deceased on his left side stomach. The sixth accused has also trampled the deceased on his private part by using his legs. Immediately, the accused fled away from the place of occurrence. The deceased was taken to a nearby Homeopathy Doctor, and the Doctor had reported that Kuppusamy died even prior to an hour. After that, P.W.2 at about 9.00 A.M., had met the Village Administrative Officer P.W.1 and had given a statement. The statement was recorded by P.W.1 under Ex.P1. P.W.1 the Village Administrative Officer, sent the statement of P.W.2 along with his report Ex.P2 to Chengam Police Station. P.W.7 the Head Constable, who was at Chengam Police Station, on 28.5.1996 at about 11.00 A.M., received the statement of P.W.2 and the report of P.W.1 and registered a case in Crime No.312/96 under Sections 147 and 302 of I.P.C. The First Information Report Ex.P8 was sent to the Court.

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(b) P.W.8 the Inspector of Police, on receipt of the copy of the F.I.R., took up investigation, proceeded to the place of occurrence, made an inspection in the presence of witnesses and

prepared an observation mahazar Ex.P3 and a rough sketch Exs.P10. Then, he went to the house of one Raju Naidu and prepared an observation mahazar Ex.P4 and a rough sketch Ex.P11. An inquest was conducted by him over the dead body of Kuppusamy in the presence of witnesses and panchayatdars, and the inquest report prepared by him, is Ex.P12. Following the same, the dead body was sent to the Government Hospital along with a requisition Ex.P5 for conducting postmortem.

(c) P.W.4 the Civil Assistant Surgeon, attached to the Government Hospital, CEng, on receipt of the requisition, conducted autopsy on the dead body of Kuppusamy on 29.5.1996 and found the following injuries:

"1. Left cheek contusion present 2" x 1".
2. An abrasion on the right wrist ½" x ½".
3. A scratch 1" below the left knee present.
Internal Examination:
On opening the abdomen, stomach intact, contains 30 ml of fluid. Liver rupture on the right lateral aspect to inferior aspect. 1" x ¼" x ¼". Kidneys intact. Intestines intact. Peritoneum contains about 200 ml of blood. Bladder empty, intact. Spleen – rupture 2" x ½" x ½" on the lateral to inferior aspect."

The Doctor has issued Ex.P7 postmortem certificate and has opined that the deceased would appear to have died of shock and haemorrhage due to injury to vital organ spleen and liver, 24 to 28 hours prior to postmortem.

(d) The material objects were recovered from the dead body. During investigation, A-1 to A-6 were arrested on 31.5.1996, and they were all produced before the Court. Mr.Kanagaraj, the Inspector of Police, who succeeded P.W.8, took up further investigation, and on completion of the investigation, the final report was filed against all the accused before the committal Court.

3. The case was committed to Court of Session, and necessary charges were framed.

4. In order to substantiate the charges levelled against the accused, the prosecution examined 8 witnesses and relied on 13 exhibits and 4 material objects. On completion of evidence on the side of the prosecution, the trial Court questioned the accused under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses, which they denied as false. Neither any defence witness was examined, nor any exhibit was marked on their side. On completion of the trial and on hearing the submissions made, the trial Court found the accused guilty as per the charges and awarded the punishment referred to above which is being challenged in this appeal by the aggrieved appellants.

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5. The learned Senior Counsel appearing for the appellants inter alia made the following submissions:

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(i) The prosecution has not proved its case beyond reasonable doubt, and under the circumstances, the lower Court should have acquitted the appellants.

(ii) What was available in the instant case, was the interested and discrepant testimonies of P.Ws.2 and 3, and except that, there was nothing available. It is pertinent to point out that P.Ws.2 and 3 were close relations of the deceased, and apart from that, the entire family of A-1 namely his wife, son and two daughters, have been implicated in the case. Further, each accused is attributed with one overt act in order to implicate the entire family. Such a make believe affair had been done.

(iii) Ex.P1 could not have been recorded by P.W.1 the Village Administrative Officer, and should have been prepared at the Police Station after improvements and meeting of minds.

(iv) If P.W.1 had sent the statement of P.W.2 to the Police, he would have affixed his Office Seal in the statement; but, no such seal is found in exp. and P2. As such, no reliance could be placed upon the same.

(v) P.W.8 the Inspector of Police, came to the scene of occurrence even before the receipt of the F.I.R. by him. This would go to show that Ex.P1 must have been prepared after the arrival of the police, which would itself clearly indicate that Ex.P1 document is not genuine, and hence, it has got to be rejected.

(vi) Even assuming that all the facts of the case of the prosecution are proved, the act of the accused would not fall within the ambit of murder, since they have attacked the deceased on the non-vital parts, in that they have kicked and slapped him without any knowledge that such kicking and slapping would result in death.

(vii) There was an inordinate delay in giving the first information and in F.I.R. reaching the Court. In such circumstances, the benefit of doubt should be given to the accused.

(viii) If the Court comes to the conclusion that they have got individual acts, the fact that it would not come under the definition of murder has got to be considered by the Court.

6. The Court heard the learned Additional Public Prosecutor on the above contentions.

7. It is not in controversy that at the time of occurrence, Kuppusamy the deceased in the case, was attacked, and when he was taken to the hospital, he was declared dead. Following the inquest, the dead body was sent to the Government Hospital for postmortem, and P.W.4 the Doctor, who conducted autopsy, has given a certificate Ex.P7 opining that he died out of shock and

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haemorrhage. The fact that Kuppusamy died on account of homicidal violence is not disputed by the appellants either before the trial Court or before this Court, and thus, the Court feels no difficulty in recording a finding that Kuppusamy died out of homicidal violence.

8. Now, the case of the prosecution is that A-1 to A-6 have caused the injury to the deceased by using hands, legs and stone respectively, as a result of which he died. It is true that P.Ws.2 and 3 are close relations of the deceased; but, the lower Court has clearly analysed their evidence and marshalled properly and considered them as true, since it has inspired the confidence of the Court. It is settled proposition of law that because of the close relationship of the witnesses with the deceased, their evidence cannot be rejected solely on that ground; but, it should be subjected to careful scrutiny. Exercise of careful scrutiny on the evidence of P.Ws.2 and 3 would clearly indicate that their evidence is natural, and hence, it has got to be accepted. From their evidence, it would be quite clear that at the time of occurrence, the accused have acted as put forth by the prosecution, and the deceased instantaneously died at the spot.

9. The contention put forth by the learned Senior Counsel for the appellants that there was inordinate delay in giving the first information and in F.I.R. reaching the Court also cannot be countenanced for the simple reason that immediately, P.W.2 had proceeded to the office of the Village Administrative Officer and had reported the incident, and Ex.P1 was the report given by him, which was sent to the Police Station, and a case came to be registered. In such circumstances, there was no delay at all. The Court is unable to notice any delay in F.I.R. reaching the Court also.

10. Apart from the above, the next contention is that P.W.8 the Investigating Officer, reached the scene of occurrence, and only there, he received the F.I.R. From the evidence of P.W.7, it would be very clear that there was a message immediately given to the Investigating Officer, and on receipt of the same, he proceeded to the scene of occurrence. Thus, the Court is unable to doubt this aspect of the matter.

11. Coming to the question of act committed by the accused, this Court is of the opinion that the contention put forth by the learned Senior Counsel for the appellants has got force. It is not a case, where the acts of the accused are premeditated in that either all of them were armed with weapons or they have got knowledge to cause either the death or such injuries which are likely to cause death in the ordinary course. In the instant case, the evidence would go to show that they constituted unlawful assembly; but, their individual acts have got to be dealt with. Under the circumstances, this Court is of the view that no offence under Sec.302 read with 149 of I.P.C. is made out, since none of the appellants could have known that by simply slapping and kicking the deceased, he will suffer fatal injuries. Therefore, the

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conviction of the appellants under Sec.302 read with 149 of I.P.C. has got to be altered to one under Sec.325 read with 149 of I.P.C., since the Doctor found grievous injuries on the deceased. This Court is of the opinion that awarding of 3 (three) years Rigorous Imprisonment for the said offence would meet the ends of justice.

12. Accordingly, the conviction of the appellants under Sec.302 read with 149 of I.P.C. and the consequent sentence imposed on them by the lower Court are set aside, and instead, they are convicted under Sec.325 read with 149 of I.P.C. and are directed to undergo 3 years Rigorous Imprisonment for the same. The conviction of the appellants under Sec.147 of I.P.C. is confirmed.

13. In the result, with the above modification in conviction and sentence, this criminal appeal is dismissed. It is reported that the appellants are on bail. Hence, the Sessions Judge will take steps to commit them to prison to undergo the remaining period of sentence imposed on them.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1)The Additional Sessions Judge, Tiruvannamalai.
2)Do Through The Principal Sessions Judge, Tiruvannamalai District.
3) The District Munsif cum Judical Magistrate, Chengam.
4) -do- Thro' The Chief Judl Magistrate, North Arcot at Vellore.
5)The District Collector, Tiruvannamalai.
6)The Director General of Police, Chennai.
7)The Public Prosecutor, Madras.
8)The Superintendent, Central Prison, Vellore.
9)The Superintendent, Special Prison for Women, Vellore.
10)The Inspector of Police, Chengam Police Station, Tiruvannamalai.

+ 1 cc to Mr.L.Mahendran, Advocate SR 28473

nsv/

TEJ(CO)
SR/15.7.2005 C.A.No.59 of 1999

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